BEFORE THE
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
TRADE POLICY STAFF COMMITTEE

SECTION 203 INVESTIGATION
OF CERTAIN STEEL

RESPONSE TO PUBLIC COMMENTS ON POTENTIAL ACTION UNDER SECTION 203 OF THE TRADE ACTION OF 1974 WITH REGARD TO IMPORTS OF CERTAIN STEEL

Filed on Behalf of
Allegheny Ludlum Corporation; American Extruded Products PMAC, Ltd.; Carpenter Technology Corporation; Crucible Specialty Metals; Electralloy Division of G.O. Carlson; Ellwood Group Inc.; Slater Steels Corporation, Specialty Alloys Division; and Timken Latrobe Steel Company

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I. INTRODUCTION

This submission, which responds to comments filed on the Trade Policy Staff Committee's ("TPSC") evaluation of options for action under section 203(a)(3) of the Trade Act of 1974, is filed on behalf of domestic stainless and tool steel industries.[1] The submission is made in connection with a notice published in the Federal Register by the TPSC. See 66 Fed. Reg. 54,321 (Oct. 26, 2001).

The submission responds to comments that relate to the evaluation of import relief options applicable to imports of stainless steel bar, angle and light shapes (collectively, "SSB"), stainless steel wire rod ("SSWR"), stainless steel wire ("SSW") and tool steel products (collectively, the "stainless and tool steel industries" or the "domestic industries"). The submission specifically responds to comments filed by the following: the American Wire Producers Association ("AWPA"); the Steel Service Center Institute ("SSCI"); EUROFER; Korea Steel & Iron Association ("KOSA") on behalf of its members producing stainless wire; European Union Producers of Tools Steel; Sandvik Steel Company (specialized wire products); BGH Edelstahl; Steel Fastener Working Group; and Kopo International.

This submission does not address comments raised by some of the above-referenced organizations that seek to reargue the serious injury determinations rendered by the International Trade Commission ("Commission" or "ITC"), in particular those suggestions that the remedy recommendations of the President should reflect the notion that the ITC affirmative determinations are somehow "fundamentally flawed." See, e.g., EUROFER's Written

[1] The domestic and stainless and tool steel companies who are represented in this submission are as follows: Allegheny Ludlum Corporation; American Extruded Products PMAC, Ltd.; Carpenter Technology Corporation; Crucible Specialty Metals; Electralloy Division of G.O. Carlson, Inc.; Ellwood Group Inc.; Slater Steels Corp., Specialty Alloys Division; and Timken Latrobe Steel Co.

Comments on What Action, If Any, The President Should Take Under Section 203(a) (Jan. 4, 2002) ("EUROFER Comments") at 3-9.

The statute is explicit in its directive to the President, upon receiving a report containing an affirmative finding from the ITC regarding serious injury, or the threat thereof, to take all appropriate and feasible action within his power to facilitate efforts by the domestic industry to make positive adjustment to import competition and provide greater economic and social benefits than costs. 19 U.S.C. § 2253(a)(1). In fashioning the appropriate action, the President is directed to take numerous factors into account, including, first and foremost, the recommendation and report of the Commission. The statute does not direct the President to revisit the fundamental determinations of serious injury by the Commission. Accordingly, any comments challenging those determinations are not relevant to this phase of the section 201 investigation and should be ignored.

Finally, while we do not argue with those who remind the President that the relief granted should not exceed that which is necessary to provide for effective adjustment to import competition, we urge the TPSC and the President to remember that the primary objective is to ensure that the relief is strong enough to facilitate the adjustment necessary. Any question on the strength of the necessary remedy should be resolved in favor of the domestic industry. Remedies may be liberalized, but they may not be strengthened. A remedy that is not strong enough to provide effective relief may well cause harm to the very industry it purports to assist.

II. LEGAL ISSUES

A. An Evenly Divided Commission Injury Vote Does Not Suggest That the President Should Impose A Weaker Remedy Or Provide No Relief At All

Some parties have suggested that, for products for which the Commission's injury vote was tied, the President should implement no remedy, or a weakened remedy, reflecting the fact that half of the Commission made a negative injury determination. In particular, the European Union Tool Steel Producers ("Tool Steel Producers") argue that the evenly-divided Commission votes means that the domestic tool steel industry is not injured and is in no need of relief. See European Union Producers of Tool Steel, Members of the European Confederation of Iron and Steel Industries' Written Comments On What Action, If Any, The President Should Take Under Section 203(a) (Jan. 4, 2002) at 7-8. Additionally, the Tool Steel Producers note that the Commissioners who did vote affirmatively "[did] not find [tool steel imports] to be so injurious to the domestic industry as to warrant severe import relief." Id. at 7. The Korea Steel & Iron Association ("KOSA") also similarly argues that the President should impose no remedy on imports of stainless steel wire based on the Commission's 3-3 injury vote. See generally Korea Steel & Iron Association's ("KOSA") Written Comments On What Action, If Any, The President Should Take Under Section 203(a) (Jan. 4, 2002).

This position should not be adopted. The statute provides that when the Commission is equally divided with respect to an injury determination under section 202(b) of the Trade Act of 1974, "the determination agreed upon by either group of commissioners may be considered by the President as the determination of the Commission." 19 U.S.C. § 1331(d)(1). Thus, the statute permits the President to determine that a split vote is an affirmative finding of serious injury. Indeed, in a recent Section 201 investigation on imports of certain steel wire rod, the President determined that a similar evenly-divided vote by the Commission was an affirmative vote of injury and granted relief to the industry. See Proclamation No. 7273, 3 C.F.R. 24 (2001).

Furthermore, an equally-divided injury vote does not alter the President's statutory obligations with respect to the remedy phase of the investigation. Even when the Commission renders an equally divided vote on injury, the Commission is obligated to recommend an appropriate remedy that issues from, and only from, the Commissioners who found the existence of serious injury of threat of serious injury to the affected industry. See 19 U.S.C. § 2252(e)(6). The recommendation of the affirmative-voting Commissioners becomes the recommendation of the Commission if the President chooses to accept the affirmative serious injury determination.[2] Once accepted, the statute directs the President to "take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs." 19 U.S.C. § 2253(a)(1)(A). Having accepted an affirmative injury determination, therefore, the opinion of the Commissioners reaching a negative determination is no longer relevant and the President's obligation is to implement an effective remedy. It would be illogical and contrary to the plain language of the statute to take an action that is less than adequate to allow the domestic industry to adjust to import competition.

Based on the above, the President should not, when fashioning an effective remedy for the wire and tool steel industries, adjust or weaken the respective remedies based on the split Commission injury determination. In the case of wire in particular, any remedy imposed that is not at least as strong as the remedy for wire rod would be devastating based on the products' close supplier relationship. Wire rod is the intermediate input product for wire. If the President imposed a more restrictive remedy for wire rod, but not wire, foreign producers/exporters of wire rod would shift their production to wire destined for the U.S. market. This would present significant problems for domestic stainless steel wire companies, and would likely lead to

[2] Similarly, nothing in the statute concerning the Commission's obligations to prepare and issue a remedy recommendation indicates that Congress intended the recommendation from an equally-divided Commission to be somehow mitigated or reduced when injury votes are evenly divided.

additional serious injury including plant closings and job losses. Because both the stainless steel wire and wire rod industries are subject to Presidential action, that action should provide relief to both industries in a parallel manner so as not to inequitably burden either.

B. The Existence of Antidumping and Countervailing Duty Orders on Certain Products for Which the Commission Made Affirmative Determinations Should Have No Impact on the President's Imposition of Import Relief

Several parties opposing import relief have submitted comments urging the President to take account of existing or likely antidumping and countervailing duty orders in implementing an import relief program for certain products on which the Commission made an affirmative determination. See, e.g., BGH Edelstahl's Written Comments On What Action, If Any, The President Should Take Under Section 203(a) (Jan. 4, 2002) ("BGH Edelstahl Comments") at 2 (urging the President to take into account the assessment of provisional remedies against imports of stainless steel bar as a result of the International Trade Commission's affirmative preliminary finding concerning subject imports from France, Germany, Italy, Korea, Taiwan, and the United Kingdom); EUROFER Comments at 9-10 (asserting that existing antidumping and countervailing duty orders provide the domestic industry with adequate protection from injury caused by imported steel products). Because these comments fail to appreciate the divergent purposes underlying the safeguards and the antidumping/countervailing duty statutes, the recommendations that the President should in some manner diminish the relief provided to certain products for which Title VII orders are in place or are pending should be rejected.

While import relief programs implemented pursuant to section 203 cover all imports, whether fairly or unfairly traded, the remedy for unfair practices under the antidumping and countervailing duty laws are conceptually different and are limited to only investigated countries. In short, section 201 provides a world-wide remedy, while AD/CVD orders are country-specific. Institution of orders against one set of countries often leads to new exporters targeting the import vacuum in the U.S. market, and any differences between the duties imposed on imports from different sources will inevitably lead purchasers to shift between suppliers. Such shifts undermine the effectiveness of relief and destabilize market pricing. Moreover, changes in currency valuation and duty absorption by affiliated importers often diminish the effectiveness of AD/CVD orders.

Furthermore, discounting the section 201 remedy for those countries with producers found to be dumping would be unfair to producers in those countries who trade fairly and also suffer a competitive disadvantage to those companies that dump or are subsidized. The President should not reward companies that dump by reducing the effect of the section 201 remedy on them. The solution for companies subject to dumping orders in the U.S. market is to demonstrate to the Commerce Department that they are no longer dumping and to thereby reduce or eliminate their antidumping duty obligations.

Indeed, it is unclear how one would fairly account for antidumping duties in any relief package. The duty deposit rates and the assessment rates in antidumping duty actions often differ and are changing over time. It also can take up to two and one half years from the time of an entry until duty assessment occurs under the antidumping duty statute. An exporter could have its 201 remedy discounted by a duty deposit rate or a recent assessment rate that is very high, only to have that rate dramatically reduced at the assessment phase of the antidumping proceeding. In that case, the 201 relief to the industry would have been improperly reduced.

Most importantly, that the domestic stainless steel wire rod and bar industries suffered serious injury by reason of import surges despite certain major producers being covered by AD/CVD orders is reason enough to view the section 201 remedy as distinct from the duties imposed pursuant to Title VII. There is no basis for the President to find that existing AD/CVD orders, which to date have neither addressed the serious injury nor prevented the import surge, will do so in the future. Existing AD/CVD orders or pending actions are not an appropriate basis on which to reduce the remedy program that the President determines is necessary to address the serious injury of the domestic stainless and tool steel industries and to facilitate the efforts of those industries to make a positive adjustment to imports.

III. ECONOMIC ISSUES

A. Although Declining Slightly in 2001, Imports Remain at Near-Record Levels and Are a Significant Cause of the Domestic Industries' Injury

EUROFER argued that imports of stainless and tool steel declined to non-injurious levels in 2001. EUROFER Comments at 7-9. Specifically, EUROFER argued that "[u]nder a statute predicated on increasing imports being the cause of serious injury or threat, it cannot seriously be argued that import restrictions are appropriate where imports have already declined to low, non-injurious levels." Id. at 7. However, it is important to note that imports remained at historically high levels in 2001. Based on annualized 2001 data, imports of stainless steel wire did not decline during 2000-2001, but instead increased to an historical high level in 2001. Although imports of stainless steel bar and tool steel declined slightly during 2000-01, they nevertheless remained at the second highest levels in history in annualized 2001. In terms of stainless steel rod, imports in 2001 remained significant compared to 1996-2000 levels.

Specifically, imports of stainless steel bar stood at 100,415 short tons during January-October 2001 (120,497 short tons in annualized 2001); imports of stainless steel rod stood at 50,870 short tons during January-October 2001 (61,044 short tons in annualized 2001); imports of stainless steel wire stood at 26,298 short tons during January-October 2001 (31,558 short tons in annualized 2001); and imports of tool steel stood at 68,366 short tons during January-October 2001 (82,039 short tons in annualized 2001).

Furthermore, an analysis of the import trends would not be complete without a discussion of the significant inventory overhang during 2001. Extremely high levels of inventories developed as a result of the largest import surge in history. Consequently, the decline in imports in 2001 is partly attributed to the distribution of these inventories into the marketplace. As these import inventories are consumed in the marketplace, imports are expected to continue to increase. Those inventories and the current imports continue to have a cumulative seriously injurious effect on the domestic industry.

B. The Domestic Stainless and Tool Steel Industries Have Already Undergone Significant Restructuring, Which Alone Will Not Bring Recovery

In its brief to the TPSC, EUROFER has put forward the claim that restructuring, rather than import restrictions, will improve the seriously injured condition of the domestic steel industry. EUROFER Comments at 13-14. As outlined below, this claim is without merit.

The domestic stainless and tool steel industries have already undergone a great deal of restructuring. Closures and consolidations took place in the stainless and tool steel industries throughout the 1990s, resulting in greatly enhanced production efficiencies.

In relation to stainless bar and rod, Carpenter Technologies purchased the modern rolling and finishing mill of Talley Metals Technology in South Carolina, and integrated that facility into its existing production facilities both upstream (melting and billet production) and downstream (bar finishing and wire redrawing). In addition, producers including Empire Specialty Steel and Republic Engineered Steels exited the business of producing stainless bar and rod and reduced industry capacity through the shutting of their production facilities.

In relation to tool steel, a number of domestic producers went out of business entirely or abandoned production of tool steel during the 1990s. During the ITC's period of investigation alone, producers exiting the tool steel business included First Miss Steel, Inc., CSC Ltd., Erie

Forge, Empire Specialty Steel, and Republic Engineered Steels. In addition, domestic producer Allegheny Ludlum Corporation sold one of its two tool steel production facilities in order to consolidate and focus its production on tool steel plate products.

Thus, the stainless and tool steel industries have already undergone a large amount of restructuring. As the industries have restructured, employment has been reduced and efficiency has increased. Thus, these industries do not need to undergo a massive restructuring and rationalization in order to regain profitability. Rather, they need to be able to increase output and raise capacity utilization rates on the efficient equipment that is already in place. Increased throughput will allow these industries to increase their production efficiency and lower costs, with the ultimate result of improved profitability. The domestic industry's market share and client base has been eroded by a surge in low-priced imports in recent years. Import restrictions are precisely the remedy that the industries need to expand their output, regain market share and long-term client base, provide an operating return on the large capital investments that have already been made in production facilities and equipment, and to pursue other adjustments to import competition.

As outlined in their adjustment plans, the producers that remain in the domestic stainless and tool steel industries do need to make additional capital investments in order to improve their efficiency and maintain competitiveness. However, these improvements will require access to capital by the industry. Such access will not be obtainable unless returns on the production of stainless bar, rod, wire, and tool steel improves from the current disastrous levels. As recognized by the Commission, it is increasing imports, not any other potential cause, that bears the primary responsibility for the destruction of the domestic industries' profitability. By the same logic, it is import restrictions (whether ultimately in the form of a meaningful quota or a significant tariff) that will remedy the serious injury suffered by the domestic stainless and tool steel industries and allow them to return to profitability and increase needed capital investment.

C. The Fact that Certain Sectors of the Domestic Stainless And Tool Steel Industries are Concentrated Does Not Lessen the Need for Import Relief

A recurring theme before the Commission phase of the investigation, as well as in comments filed with the TPSC, is that because a domestic industry has become consolidated by reason of acquisitions or as the result of bankruptcies or voluntary departures from the marketplace, the industry is not entitled import to relief. The argument has been made, in particular, with respect to the position in the stainless long product marketplace held by Carpenter Technology Corporation. See EUROFER Comments at 6.

It is ironic that proponents of this position also suggest that any remedy imposed by the President be designed to encourage restructuring and consolidation. Id. at 13-14. In fact, the conditions that were responsible for much of the concentration of the stainless steel bar and wire rod markets, are those which are the focus of this proceeding, the surge of imports over the recent five year period, that eventually led two of the principal stainless bar and rod producers to exit from the marketplace. It would be contrary to the statute to exclude the stainless bar and rod industries from the scope of any remedy simply because only one or two producers were fortunate enough to survive the recent import assault. Furthermore, the impact on customers is minimal, given the international nature of the markets and substantial import penetration.

The statute provides that a relief program implemented pursuant to section 201 should be crafted to "facilitate positive adjustment to import competition." 19 U.S.C. § 2251. In order to facilitate that adjustment, the proposed remedy must ensure that those industries have the capability to take measures necessary that will enable them to compete with imports following the termination of any import relief ultimately ordered. In other words, to achieve the statutory goal of section 201, the remedy must both address past injury and be prospective in nature so as to facilitate positive adjustment to import competition prior to the eventual termination of that relief.

The record before the Commission demonstrated that even where there was a higher degree of concentration, the remaining producers were themselves seriously injured by reason of imports. Moreover, the Commission found that these producers were committed to investment in an effort to adjust to import competition. It was also determined by the Commission that these producers would be unable to make those investment if relief were not granted.

The relief recommendation of the President should, therefore, not be affected by the degree of concentration in a particular sector. Those stainless long product sectors that are highly concentrated have suffered the same serious injury by reason of imports as certain less concentrated sectors. Indeed, in most instances, the degree of concentration is a function of the import-related injury.[3]

IV. WITH THREE EXCEPTIONS, THE TPSC SHOULD RECOMMEND THAT THE PRESIDENT DENY THE VARIOUS EXCLUSION REQUESTS MADE WITH RESPECT TO VARIOUS STAINLESS AND TOOL STEEL PRODUCTS

Several parties submitting comments on what actions, if any, the President should take pursuant to section 203 on the recommendations of the International Trade Commission, used those comments as an opportunity to reiterate their requests that the President exclude certain stainless and tool steel products from the scope of any import relief program. See, e.g., EUROFER Comments at 4-7; Sandvik Steel Company's Written Comments On What Action, If

[3] While the remaining producers continue to retain the capacity to service the domestic market, the industry supports a reasonable short supply provision in its remedy proposal to enable consuming industries to avoid the scope of a remedy in the event of legitimate shortages.

Any, The President Should Take Under Section 203(a) (Jan. 4, 2002) at 2-8; Kopo International's December 28, 2001 Submission (concerning exclusion on certain tool steel and special-quality oil field stainless steel products); BGH Edelstahl Comments at 2-4 (concerning the exclusion of special-quality oil field equipment stainless steel products).

The domestic stainless and tool steel industries have addressed the various exclusion requests submitted to the International Trade Commission and the Trade Policy Staff Committee extensively.[4] In those submissions, the domestic industry has consistently expressed its opposition to the exclusion of products that the domestic industry currently produces or is capable of producing, assuming a return of reasonable pricing to the U.S. market.

The domestic stainless and tool steel industries have a documented history of not opposing exclusion requests in instances where a product or its competitive substitute is not commercially available in the United States. Indeed, in this proceeding the domestic industry has not opposed the exclusion requests filed by: (1) Daido Stainless Steel Co., Ltd. concerning certain leaded stainless steel wire products; (2) Hitachi Metals, Ltd. and Hitachi Metals America, Ltd. concerning certain stainless steel wire rod; and (3) various Japanese respondents' concerning non-oriented, high silicon, magnetic sheet steel. See Domestic Industry's December 5, 2001 Submission to the Trade Policy Staff Committee Concerning Exclusions at 2 n.3. With respect to the remaining products for which exclusions have been requested, however, the domestic industry opposes those requests based on the existence of current domestic production or the capacity to produce those products domestically.

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[4] See Posthearing (Remedy) Brief of the Domestic Stainless and Tool Steel Industries, filed with the International Trade Commission on Nov. 15, 2001, at 76-78 and Attachment 6; Domestic Specialty Steel Industry's December 5, 2001 Submission to the Trade Policy Staff Committee Addressing Exclusion Requests; Domestic Specialty Steel Industry's December 20, 2001 Submission to the Trade Policy Staff Committee Addressing Additional Exclusion Requests.

Finally, the domestic industry has expressed its support for the President's adoption of a focused short supply mechanism to help ensure that those products that cannot be produced domestically and cannot otherwise be obtained may be imported. Any short supply mechanism ultimately adopted by the President, however, must eliminate the consideration of price as a factor in determining whether a short supply exists. Further, short supply claims should not be granted when the request is based solely on brand preference or a claim that domestic suppliers are not qualified to provide the product in question. Products for which there is a domestic commercial substitute should also not be subject to short supply claims; short supply should be a function of necessity rather than preference. Domestic producers should have the opportunity to market competing products to customers that have previously relief on imports.

A short supply provision that meets these considerations will help ensure that domestic consumers have access to a complete range of stainless and tool steel products in a manner that will help ensure that any import relief program ultimately implemented by the President provides the domestic industry with the greatest possible opportunity to adjust to import competition. For all stainless and tool steel products for which the domestic industry has indicated the ability and willingness to supply an identical or competing product, exclusion requests should be dealt with under any short supply procedures set up as a part of the remedy.

V. <u>ALTERNATIVE REMEDY PROPOSALS</u>

Two sets of comments were filed on proposed remedies that would affect domestic stainless and tool steel producers. Comments on each of these proposals follow.

A. <u>Steel Service Center Institute</u>

The Steel Service Center Institute ("SSCI") proposed that the President proclaim an additional tariff of 20 percent on all steel mill products and a corresponding offsetting tariff on certain steel-containing products (to be determined based on consultation with steel consuming industries). The tariff would be imposed, for each product, in such a manner as to eliminate the lowest import prices from the market, and to eliminate the average financial loss incurred by U.S. producers of that product. Central to the proposal, however, is a provision that the President waive any additional tariffs based on a certification by any country or Customs Union (e.g. EU) that it is in compliance with principles of free and open trade in steel (e.g. relative balance between imports and exports; relative balance between consumption and capacity; absence of subsidies). See generally Steel Service Center Institute's Written Comments On What Action, If Any, The President Should Take Under Section 203(a) (Jan. 2, 2002).

The domestic stainless and tools steel industries welcome the willingness of SSCI to entertain import relief. That the largest consuming group for specialty steel products requests a 20 percent tariff as a remedy demonstrates that these industries are in need of significant and meaningful relief. There are fundamental problems with the proposal that render it unacceptable, however. First, as explained in our critique of the Commission's remedy proposal, the 20 percent level of the tariff proposed is inadequate to provide domestic stainless and tool steel producers the ability to adjust to import competition. Prices in the domestic stainless and tool steel markets are already greatly depressed and need to be restored quickly. The Commission report also indicates margins of underselling during the period of investigation well in excess of the 20 percent proposed by SSCI in the domestic stainless and tool steel markets. Given the already proven capacity of certain foreign producers to absorb duties of 20 percent and more in antidumping cases, a 20 percent tariff will have insufficient effect on domestic stainless and tool steel markets. Moreover, the overall strength of the dollar relative to the exchange rate in most steel producing countries in Europe and Asia suggests a further ability on the part of foreign steel producers to absorb a midlevel tariffs and reaffirms the inadequacy of the SSCI proposal.

Second, the SSCI maximum tariff proposal is designed only to eliminate the lowest current import prices and to eliminate the average financial loss incurred during 2001. Determining the applicability of the maximum tariff, given these criteria, would necessitate the creation of a large bureaucracy. Moreover, the limited applicability would likely render the import relief ineffective.

Third, the certification program proposed would substantially delay implementation of any import relief. Furthermore, the basic premise that countries be excluded on the basis of their "free trade credentials" flies in the face of the underlying nature of the "Safeguards" provision. The provision does not distinguish between imports which are fairly or unfairly traded, but rather is intended to provide a period of adjustment to domestic industries that are seriously injured by increased imports from all countries. The domestic stainless and tool steel industries were seriously injured by both fairly and unfairly traded imports, and the remedy must address both equally.[5]

Finally, the proposal to impose tariffs on imports of certain "downstream" steel-containing articles has no legal basis in section 201 or the "Safeguards" provision of the WTO and would, therefore, invite retaliation from U.S. trading partners. The imposition of import relief cannot be imposed on a product, absent a finding of serious injury by reason of imports of that product.

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[5] Further it is questionable whether the United States would be permitted by the WTO to vary the burden of the relief between countries on this basis given the importance of the doctrines of nondiscrimination and parallelism in recent WTO cases. See Appellate Body Report, United States - Wheat Glutten, WT/DS166/AB/R at 34; see also, Dispute Panel Report, United States - Line Pipe, WT/DS2002/R at 69-70, 97.

In sum, the SSCI proposal, while well-intentioned, is legally flawed, and more importantly, would fail to provide domestic stainless and tool steel producers with the sufficient amount of relief to facilitate efforts to adjust to import competition.

B. American Wire Producers Association

The American Wire Producers Association ("AWPA"), representing producers of stainless wire, have proposed a three year tariff on imports of stainless wire beginning at 30 percent and declining to 25 percent in year two and 20 percent in year three. See generally American Wire Producers Association Written Comments On What Action, If Any, The President Should Take Under Section 203(a) (Jan. 4, 2002). The level of relief proposed by AWPA is comparable to the alternative tariff remedy proposed by domestic stainless and tool steel industries in their comments. See SSINA Written Comments On What Action, If Any, The President Should Take Under Section 203(a) (Jan. 4, 2002) ("SSINA Comments") at 16-17. Of critical importance, the AWPA also recognizes the importance of having comparable remedies on stainless steel wire rod and stainless steel wire. As noted by AWPA, these products have an upstream-downstream relationship, and any restrictions placed on the upstream product will have a direct impact on the industry producing the downstream product. The converse is also correct. Moreover, any inequality between the level of the tariff imposed on each of the two products will have the effect of encouraging movement up or down the production continuum.[6] The Commission has found that both the stainless steel wire rod and wire industries have suffered serious injury. The level of relief must not only reflect that finding, it must also be established at a level that would not give preference to the importation of one product over another.

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[6] The same could also be said of stainless steel bar and stainless steel wire rod. Wire rod is the feed stock for both wire and bar, necessitating parallel relief to all three.

VI. RESPONSE TO SPECIFIC QUESTIONS FROM TPSC MEETING

1. If there is no mid-term review can the Administration nevertheless adjust the remedy during the import relief period?

The President has, in the past, reviewed and terminated a 201 remedy in its initial period of application without first receiving a mandatory mid-term review and accompanying report from the Commission under 19 U.S.C.§ 2254(a)(2). In connection with the Commission's affirmative determination in its 201 investigation with respect to broom corn brooms, the President imposed a duty increase for three years against foreign imports on November 28, 1996. See Proclamation No. 6961, 61 Fed. Reg. 64,431 (Dec. 4, 1996). Because the relief provided did not exceed three years, the Commission was not required to submit a mid-term report to the President detailing the results of its monitoring under 19 U.S.C. § 2254(a)(2). However, on May 11, 1998, President Clinton exercised his right under 19 U.S.C. § 1332(g) and requested the Commission to initiate a 332 investigation and report on the developments of the domestic broom corn broom industry since the imposition of the 201 remedy, as well as the progress and specific efforts of the industry to make a positive adjustment to import competition. See Proclamation No. 7154, 63 Fed. Reg. 67,761 (Dec. 8, 1998). Based on the Commission's report, as well as advice from the Secretary of Commerce and the Secretary of Labor, the President determined under 19 U.S.C. § 2254(b)(1)(A) that changed circumstances warranted the termination of the safeguard action on the basis that the industry had not made adequate efforts to adjust to import competition. Id.

As the domestic stainless and tool steel industries have explained the Commission to the TPSC, however, a full period of relief, uninterrupted by a mandatory mid-term review, is necessary to provide an effective and adequate remedy. See SSINA Comments at 5. The domestic industries have requested that the President impose a three year period of relief without a mid-term review for the efficient implementation of a remedy that accounts for the industry's capital intensive nature. A review initiated after 18 months of the remedy would not account for a full business cycle and, therefore, would not provide any meaningful information with which to evaluate the full effect of the imposed remedy. Indeed, because of the capital intensive nature of the industry, analysts predict that it will take the full three years to determine if the remedy is creating the desired effects. A review held at such an earlier point would not provide information of any material value but would come at a significant cost to the industry.

2. Should the President's decision be affected by the degree of concentration of U.S. producers?

See Comments at Section III.C supra.

3. Does the domestic stainless and tool steel industries' anti-surge proposal constitute retroactive relief?

The stainless and tool steel industries' anti-surge mechanism does not constitute retroactive relief. It is merely an effective means of calculating the quota level necessary to provide relief to the industries, taking into account events since the ITC's initiation of the investigation. Any surge in imports designed to build inventories prior to implementation of the remedy may well reduce or eliminate the relief provided by that remedy. The domestic industry's surge mechanism is merely a means to arrive at a quota level that meets the statutory purpose of providing the domestic industries with effective current relief. In addition, an antisurge mechanism serves the important purpose of discouraging a surge of imports immediately prior to the imposition of the remedy. The proposed antisurge mechanism, therefore, it does not provide extra or retroactive relief. It merely ensures that the remedy achieves its statutory goal in the first year of relief.

The domestic industry's anti-surge mechanism will only apply if there is a surge in imports immediately prior to the imposition of the remedy, and then, will only offset the quota for the first period of relief by the amount of the surge. For example, imports in the fourth quarter 2001 would be compared with the average imports of the first three quarters of 2001. If the volume of the fourth quarter is higher than the average, the difference would be deducted from the first quarter of quotas (e.g. the first quarter of 2002). Therefore, the anti-surge mechanism will act as an equalizing agent, and will adjust the actual quota level to reflect what previously happened in the market place.

4. Can public versions of the industries' financial data, as provided to the ITC, be released?

In the Commission's Section 201 Steel Prehearing Staff Report (September 4, 2001), the domestic industries' financial data for stainless bar, stainless wire, and tool steel were public. The public versions of these data are presented in Exhibit A. Although the data were revised slightly in the Final Staff Report, these data are a good indication of the final results of the Commission's investigation. In terms of stainless rod, only two major U.S. producers provided financial data and therefore their proprietary data cannot be made public without causing competitive harm to those producers.

5. What are the differences between the domestic stainless and tool steel markets and the carbon steel markets during the POI?

The selection of the 1993-95 period is appropriately representative in that it predates the serious injury incurred by the domestic stainless and tool steel industries. During the period 1996-98, the domestic industries' financial performance declined significantly to operating income levels of below 5 percent. <u>See</u> Exhibit A. Given the substantial capital investments required in the stainless and tool steel industries, these financial returns are not adequate. The production of stainless and tool steel products are capital-intensive processes and a manufacturer's ability to be an efficient producer in the long-run is dependent on making necessary investments in the short run.[7] The declines in the domestic industry's profitability, however, have resulted in significant reductions in capital investments over the period of investigation. In fact, the domestic industries' operating income seldom covered their capital expenditures in any year during the period of investigation. If this trend is not reversed, the remaining domestic producers of stainless and tool steel products will fall further and further behind in their ability to produce efficiently and compete with other producers throughout the world.

The stainless and tool steel industries suffered such financial deterioration over the POI because of low-priced import competition. The primary reason that the stainless and tool steel industries experienced such dire financial performances is because imports captured a significant share of the U.S. market by substantially underselling the domestic product. Consequently,

[7] The stainless and tool steel industries are more capital intensive than the carbon steel industries. For example, capital expenditures as a share of net sales ranged between 3.8 percent and 5.8 percent for hot bar, 1.2 percent and 2.5 percent for cold bar, and 2.9 percent and 5.0 percent for wire. In comparison, capital expenditures as a share of net sales ranged between 4.4 percent and 14.7 percent for stainless bar, 2.7 percent, 8.1 percent for stainless wire, and 3.2 percent and 17.6 percent for tool steel.

imports' share of the stainless and tool steel markets reached historical high levels during the period of investigation, with market shares ranging between 35 percent and 47 percent for stainless bar; between 55 percent and 67 percent for tool steel, and between 20 percent and 27 percent for stainless steel wire. Staff Report at STAINLESS-55-56. In comparison, the imports' market shares in the carbon industries were much smaller. For example the imports' market share of carbon hot bar ranged between 17 percent and 23 percent, cold bar ranged between 15 and 20 percent, and carbon wire ranged between 18 percent and 20 percent. Staff Report at LONG-67-69.

Given the serious injury incurred by the stainless and tool steel industries throughout the POI and the economic forecasts of declining demand, a quota program based on any years within the 1996-99 period would not provide effective import relief. A quota-program based on the period 1993-95 would restore the U.S. producers' market share to levels that would enable the U.S. industry to experience a sustainable level of profit and to invest in capital expenditures that would make it more internationally competitive.

Respectfully submitted,

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EXHIBIT A

Table STAINLESS-29
Bar: Results of operations of U.S. producers, fiscal years 1996-2000, January-June 2000, and January-June 2001

Item	Fiscal year					January-June	
	1996	1997	1998	1999	2000	2000	2001
	Quantity (*tons*)						
Net commercial sales	169,526	175,012	161,388	165,183	159,592	92,028	82,423
	Value (*$1,000*)						
Net commercial sales	657,593	632,526	552,298	525,877	573,528	309,901	294,137
COGS	567,436	548,671	491,546	486,098	524,433	281,677	270,159
Gross profit	90,157	83,855	60,752	39,779	49,095	28,224	23,978
SG&A expenses	40,340	48,935	40,067	35,190	46,839	19,478	25,377
Operating income or (loss)	49,817	34,920	20,685	4,589	2,256	8,746	(1,399)
Interest expense	10,600	10,967	9,582	11,599	14,843	6,858	7,181
Other (income)/expenses, net	5,508	2,536	1,151	336	6,297	1,064	703
Net income or (loss)	33,709	21,417	9,952	(7,346)	(18,884)	824	(9,283)
Depreciation/amortization	20,408	22,224	23,078	25,027	24,287	12,632	12,179
Cash flow	54,117	43,641	33,030	17,681	5,403	13,456	2,896
Capital expenditures	49,701	54,530	81,120	55,581	25,259	23,169	12,794
R&D expenses	5,189	5,840	5,787	5,667	5,420	2,757	2,648
	Ratio to net commercial sales (*percent*)						
COGS	86.3	86.7	89.0	92.4	91.4	90.9	91.8
Gross profit	13.7	13.3	11.0	7.6	8.6	9.1	8.2
SG&A expenses	6.1	7.7	7.3	6.7	8.2	6.3	8.6
Operating income or (loss)	7.6	5.5	3.7	0.9	0.4	2.8	(0.5)
Net income or (loss)	5.1	3.4	1.8	(1.4)	(3.3)	0.3	(3.2)
	Unit value (*dollars per ton*)						
Net commercial sales	3,879	3,614	3,422	3,184	3,594	3,367	3,569
COGS total	3,347	3,135	3,046	2,943	3,286	3,061	3,278
Raw materials	1,299	1,160	1,031	1,127	1,298	1,390	1,234
Direct labor	387	396	397	358	379	346	376
Other factory costs	1,661	1,579	1,618	1,457	1,608	1,325	1,668
Gross profit	532	479	376	241	308	307	291
SG&A expenses	238	280	248	213	293	212	308
Operating income or (loss)	294	200	128	28	14	95	(17)
	Number of firms reporting						
Operating losses	1	2	3	5	5	5	7
Data	12	12	12	12	13	13	13

Note.–Carpenter and Talley included its company transfers in net commercial sales.

Source: Compiled from data submitted in response to Commission questionnaires.

Table STAINLESS-31
Tool: Results of operations of U.S. producers, fiscal years 1996-2000, January-June 2000, and January-June 2001

Item	Fiscal year					January-June	
	1996	1997	1998	1999	2000	2000	2001
	Quantity (*tons*)						
Net commercial sales	40,594	37,422	34,616	38,173	36,001	20,601	14,466
	Value (*$1,000*)						
Net commercial sales	188,294	176,601	159,460	152,716	147,101	80,907	60,398
COGS	160,366	146,304	137,744	138,714	132,804	71,427	57,080
Gross profit	27,928	30,297	21,716	14,002	14,297	9,480	3,318
SG&A expenses	15,720	15,039	14,270	11,414	11,153	6,216	4,911
Operating income or (loss)	12,208	15,258	7,446	2,588	3,144	3,264	(1,593)
Interest expense	2,799	3,775	2,384	3,007	4,401	2,331	2,006
Other (income)/expenses, net	503	275	245	135	61	22	(3)
Net income or (loss)	8,906	11,208	4,817	(554)	(1,318)	911	(3,596)
Depreciation/amortization	7,000	7,392	8,777	9,004	8,622	4,370	4,337
Cash flow	15,906	18,600	13,594	8,450	7,304	5,281	741
Capital expenditures	6,060	14,659	28,042	12,241	6,020	3,452	2,728
R&D expenses	477	412	385	289	222	125	118
	Ratio to net commercial sales (*percent*)						
COGS	85.2	82.8	86.4	90.8	90.3	88.3	94.5
Gross profit	14.8	17.2	13.6	9.2	9.7	11.7	5.5
SG&A expenses	8.3	8.5	8.9	7.5	7.6	7.7	8.1
Operating income or (loss)	6.5	8.6	4.7	1.7	2.1	4.0	(2.6)
Net income or (loss)	4.7	6.3	3.0	(0.4)	(0.9)	1.1	(6.0)
	Unit value (*dollars per ton*)						
Net commercial sales	4,638	4,719	4,607	4,001	4,086	3,927	4,175
COGS total	3,950	3,910	3,979	3,634	3,689	3,467	3,946
Raw materials	1,483	1,251	1,207	1,193	1,158	1,098	1,193
Direct labor	784	779	852	759	822	762	972
Other factory costs	1,683	1,879	1,920	1,682	1,709	1,607	1,781
Gross profit	688	810	627	367	397	460	229
SG&A expenses	387	402	412	299	310	302	339
Operating income or (loss)	301	408	215	68	87	158	(110)
	Number of firms reporting						
Operating losses	3	0	2	3	3	1	4
Data	7	7	7	7	7	7	7
Source: Compiled from data submitted in response to Commission questionnaires.							

Table STAINLESS-32
Wire: Results of operations of U.S. producers, fiscal years 1996-2000, January-June 2000, and January-June 2001

Item	Fiscal year					January-June	
	1996	1997	1998	1999	2000	2000	2001
	Quantity (*tons*)						
Net commercial sales	78,020	80,801	74,457	75,912	73,332	40,715	33,029
	Value (*$1,000*)						
Net commercial sales	292,296	296,799	267,675	260,348	257,463	140,858	111,339
COGS	258,730	260,550	235,982	227,674	226,786	120,545	104,133
Gross profit	33,566	36,249	31,693	32,674	30,677	20,313	7,206
SG&A expenses	22,968	26,106	24,982	25,273	24,823	12,504	11,635
Operating income or (loss)	10,598	10,143	6,711	7,401	5,854	7,809	(4,429)
Interest expense	5,894	6,196	6,111	5,863	6,265	3,126	2,929
Other (income)/expenses, net	779	431	2,965	6,535	1,500	499	1,833
Net income or (loss)	3,925	3,516	(2,365)	(4,997)	(1,911)	4,184	(9,191)
Depreciation/amortization	12,772	13,763	13,797	13,090	12,768	6,790	6,152
Cash flow	16,697	17,279	11,432	8,093	10,857	10,974	(3,039)
Capital expenditures	20,070	18,196	21,555	14,344	6,992	4,949	5,127
R&D expenses	1,147	1,410	1,196	997	821	472	389
	Ratio to net commercial sales (*percent*)						
COGS	88.5	87.8	88.2	87.5	88.1	85.6	93.5
Gross profit	11.5	12.2	11.8	12.6	11.9	14.4	6.5
SG&A expenses	7.9	8.8	9.3	9.7	9.6	8.9	10.5
Operating income or (loss)	3.6	3.4	2.5	2.8	2.3	5.5	(4.0)
Net income or (loss)	1.3	1.2	(0.9)	(1.9)	(0.7)	3.0	(8.3)
	Unit value (*dollars per ton*)						
Net commercial sales	3,688	3,594	3,511	3,351	3,422	3,371	3,290
COGS total	3,263	3,154	3,095	2,933	3,014	2,884	3,079
Raw materials	1,755	1,634	1,629	1,522	1,584	1,560	1,533
Direct labor	285	299	286	260	249	248	247
Other factory costs	1,020	990	958	947	965	880	1,074
Gross profit	424	439	416	418	407	487	211
SG&A expenses	290	316	326	324	330	301	343
Operating income or (loss)	135	123	89	94	77	187	(132)
	Number of firms reporting						
Operating losses	2	3	3	3	3	1	11
Data	18	18	17	17	17	17	17

Source: Compiled from data submitted in response to Commission questionnaires.